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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/544,614 | 04/06/2000 | Christophe Le Roy | ATOCH-174 | 9121 |

23599 7590 11/29/2001

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| EXAMINER |
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RHEE, JANE J

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| ART UNIT | PAPER NUMBER |
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1772

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/544,614

Applicant(s)

LE ROY ET AL.

Examiner

Jane Rhee

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claim 1-8 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10-18 of copending Application No. 09544613 in view of Jammet.

This is a provisional obviousness-type double patenting rejection. Jammet discloses in two pending applications a duplicate set of claims wherein the present application he discloses 5 to 30 parts of a polymer (A) comprising a blend of a polyethylene (A1) of relative density between 0.935 and 0.980 and of a polymer (A2) selected from the group consisting of elastomers, very low-density polyethylenes and metallocene copolymers, the (A1) + (A2) blend being cografted with an unsaturated

carboxylic acid. Le Roy discloses 95 to 70 parts of polyethylene (B) of relative density between 0.935 and 0.950. Le Roy discloses the blend of (A) and (B) having a relative density between 0.935 and 0.950, a content of grafted unsaturated carboxylic acid of between 30-10,000ppm, and an MFI measured according to ASTM D 1238 at 190°C/2.16 kg of between 5 and 100.

Jammet discloses that the comonomer of (A1) is the same as that of (B).

Jammet discloses a binder wherein (A1) comprises at least 75 mol % of ethylene and has an $MFI_2/[\eta]^{-8.77}$ ratio greater than 15 in absolute value. Jammet discloses a binder wherein (A2) comprises at least 50 mol % of ethylene and has an $MFI_2/[\eta]^{-8.77}$ ratio greater than 15 in absolute value. Jammet discloses a binder wherein (A) has an ethylene content not less than 70 %mol and the MFI_{10}/MFI_2 ratio is between 5 and 20, where MFI_2 is the melt flow index at 190°C under a load of 2.16kg, measured according to ASTM D 1238, and MFI_{10} is the melt flow index at 190°C under a load of 10 kg according to ASTM D 1238, the intrinsic viscosity $[\eta]$ denoting the viscosity index in dl/g of a polymer measured in a decalin solution at 135°C.

Jammet discloses a multilayer structure comprising a layer directly attached to the binder, a layer selected from the group consisting of nitrogen –containing or oxygen-containing polar resin, a layer of polyamide resin, a layer of a polyester resin, and a metal layer. Jammet teaches a structure in which either a polyolefin layer or layer E is directly attached on the binder side. Jammet also teaches a structure comprising an HDPE layer of the binder, either a layer of EVOH or of an EVOH alloy or a polyamide or polyamide-based layer, a second layer of binder and an HDPE layer.

Jammet discloses a rigid hollow body made of multilayer structure. Jammet discloses a gasoline tank comprising a structure as described above.

However, Jammet discloses in his copending application (09544613), all of which is described above with the exception of a slightly lower relative density between 0.910 and 0.940. It has been shown in the established legal precedent by prior case law In Re Aller, that optimum or workable ranges discovered by routine experimentation is ordinarily within the skill of the art.

Claim Objections

2. Claim 8 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 3. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: definitions of (A) and (B) in claim 1 line 7; definition of MFI (ASTM D 1238) in claim 1 line 11; definition of (A) and (B) in claim 2; and definition of layer (E) in claim 3.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nagano (4,397,916).

Nagano discloses 5 to 30 parts of a polymer (A) (col.3 line 14) comprising a blend of a polyethylene (A1) (col.1 line 45) of relative density between 0.935 and 0.980 (col.2 line 55) and of a polymer (A2) selected from the group consisting of elastomers, very low-density polyethylenes and ethylene copolymers, the (A1) + (A2) blend being grafted with an unsaturated carboxylic acid (col.1 line 41). Nagano discloses 95 to 70 parts of polyethylene (B) (col.4 line 65) of relative density between 0.935 and 0.950. Nagano discloses the blend of (A) and (B) having a relative density between 0.930 and 0.950 (col.2 line 67), a content of grafted unsaturated carboxylic acid of between 30-10,000ppm (col.2 line 64), and an MFI measured according to ASTM D 1238 at 190°C/21.6 kg of between 5 and 100 (col.2 line 68).

Nagano discloses a multilayer structure comprising a layer directly attached to the binder, a layer selected from the group consisting of nitrogen –containing or oxygen-containing polar resin, a layer of polyamide resin, a layer of a polyester resin, and a metal layer (col.1 line 4). Nagano teaches a structure in which either a polyolefin layer or layer E is directly attached on the binder side (col.1 line 24-32). Nagano also teaches

a structure comprising an HDPE layer of the binder, either a layer of EVOH or of an EVOH alloy or a polyamide or polyamide-based layer, a second layer of binder and an HDPE layer (col. 9 line 55-66).

Nagano discloses a rigid hollow body made of multilayer structure (col.9 line 23). Nagano discloses a gasoline tank comprising a structure as described above (col.1 line 66).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-5408 for regular communications and 703-301-9999 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

November 16, 2001


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/19/01